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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019
(Filed April 23, 2012)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING WATER PLUS' MOTION TO DISMISS**

Summary

On March 30, 2016, Water Plus filed a *Motion to Dismiss the Proceeding of the Monterey Peninsula Water Supply Project* (Motion). This ruling denies the motion to dismiss because: (1) the motion does not state the law supporting the ruling requested; (2) triable issues of material fact remain; and (3) even interpreting the facts in the manner most favorable to Water Plus, Water Plus would not be entitled to judgment as a matter of law.

1. Background

In April 2012, California American Water Company (Cal-Am) filed the current application. The application proposed the Monterey Peninsula Water Supply Project (MPWSP) with new water supply by 2016 from three sources: aquifer storage and recovery project (ASR), ground water replenishment project (GWR), and a desalination plant.

On September 25, 2013, this proceeding was bifurcated into two phases. Phase 1 addresses whether or not the desalination plant and related facilities for the MPWSP should be granted a Certificate of Public Convenience and Necessity

(CPCN). Phase 2 deals with the Groundwater Replenishment (GWR) project and whether applicant should be authorized by the Commission to enter into a Water Purchase Agreement (WPA) for GWR water.

On October 1, 2015 Water Plus filed a motion to dismiss the proceeding on the basis of data tampering on the MPWSP's evaluation. The motion also alleged that the project was extremely costly and risky.

On October 29, 2015 a ruling denying the motion was issued stating that: (1) Water Plus failed to state the law supporting the motion and ruling requested, (2) the papers filed by the parties disclose on their face that triable issues of material fact remain; and (3) even construing the facts in the manner most favorable to Water Plus, Water Plus would not be entitled to judgment as a matter of law.

On March 14, 2016, Cal-Am filed an Amended Application. On March 30, 2016, Water Plus filed a second motion to dismiss claiming that the issue of fraud and data tampering remain alive (Motion at 2.) and that the revisions in Cal-Am's amended application ... "violate water-rights law and the state Agency Act." (Motion at 2 and 3.) The Motion also states that the GWR has questionable reliability, cost and safety. (Motion 10-16.)

On April 8, 2016, the assigned Commissioner and Administrative Law Judge issued a Joint Ruling requesting additional data and expressing concerns regarding the March 14, 2016 draft WPA. A panel of witnesses testified at the hearing on April 13, 2016, in response to the joint Ruling.

On April 13, 2016 Cal-Am filed its response to Water Plus' Motion stating that the current Motion cannot be granted because it does not state the laws supporting the Motion and the ruling requested and the Motion demonstrates, on its face, that triable issues of fact remain. (Cal-Am Response at 2.)

On April 25, 2016, a joint assigned Commissioner and Administrative Law Judge Ruling directed Cal-Am to provide a revised WPA based on the testimony given on April 13, 2016.

The revised WPA was provided in Cal-Am's supplemental testimony served on May 19, 2016, and was subject to cross-examination at hearing on May 26, 2016.

2. Discussion

Once again, Water Plus has not shown that it is entitled to the ruling it seeks. Among other things, a motion "must concisely state the ...law supporting its motion." Rule 11.1(d). The Motion does not state any supporting law. The Commission has also stated that a motion to dismiss under Rule 11.1(d) is similar to a summary judgement motion in civil court. (Campbell v. So. Cal. Edison Co., Decision (D.) 15-07-009, mimeo at 6.) The "purpose of both types of motions is to permit determination of whether there are any triable issues of material fact before proceeding to trial, thus promoting and protecting efficiency in the administration of cases by eliminating needless litigation." (*Id.*) A motion to dismiss "requires the Commission to determine whether the party bringing the motion prevails solely on undisputed fact and matters of law." (*Id.*, citing Raw Bandwidth Communications, Inc. v. SBC California, Inc., D.0405006, mimeo at 8.) None of the statements in the Motion are undisputed facts and matters of law.

In its Motion, Water Plus reintroduces its claims of data tampering and fraud regarding the model used for the Commission's environmental review of the MPWPS. Contrary to Water Plus' argument, this issue does not "remain alive" but was previously addressed in the October 29, 2015 Administrative Law Judge's Ruling Denying Motion to Dismiss. That ruling determined that Water

Plus' accusations of data tampering and fraud do not provide justification for dismissing Cal-Am's application. As to this issue the Motion is again denied.

The Motion claims that Cal-Am's amended project description violates the Agency Act. The Motion contends that the amended project proposes to obtain the project source water from the Salinas Valley Groundwater Basin in violation of the Agency Act which prohibits exportation of the groundwater from the Salinas Valley. The Motion states, "In other words, Cal Am cannot legally draw and export, to the ocean or anywhere else, any groundwater from that basin. The Monterey County Water Resources Agency must enforce the act that created it. To date it has failed to do so. The Commission must not abet or join in the agency's failure." (Motion at 4.)

The motion fails to state the law supporting the ruling requested. Even if the Water Plus allegations are accurate, which has not been proven, Commission dismissal of this proceeding cannot be premised on Water Plus' frustration with the actions of the Monterey County Water Resources Agency.

The Motion also contends that in the test well operation, Cal-Am is exporting all of the millions of gallons of groundwater the well is pumping each day into the Pacific Ocean, the fraction of potable water returned to the valley being zero. (Motion at 5.) The Motion states that the California Coastal Commission has issued a permit to Cal-Am to commit the violation on condition that the test well be disassembled upon completion of the testing to prohibit the well's use in the proposed project. Water Plus contends that Cal-Am's amended application proposes to use the test well as one of the project's back-up wells. (Motion at 5.)

Again, Water Plus asks the Commission to dismiss the application on the basis of its contention that Cal-Am is in violation of a permit issued by another

agency, in this case, the California Coastal Commission. The contentions are not undisputed and the Motion does not state the law supporting the ruling requested. Therefore, the Motion does not meet the requirements for the requested dismissal on this issue.

The Motion makes several statements questioning the GWR water's safety, reliability and cost (Motion at 10-15.) These statements are not undisputed. In fact, the Monterey Regional Water Pollution Control Agency and the Monterey Peninsula Water Management District rebut the Water Plus claims. Furthermore, these are all issues of triable fact that are currently the subject of testimony and cross examination in the proceeding. Therefore, the Motion does not meet the requirements for the requested dismissal on these issues either.

As with its previously denied Motion to Dismiss, Water Plus' current Motion does not state the laws supporting the Motion and the Motion itself demonstrates that triable issues of material fact remain. Therefore, the Motion cannot be granted.

IT IS RULED that Water Plus' motion to dismiss is denied.

Dated August 30, 2016, at San Francisco, California.

/s/ GARY WEATHERFORD

Gary Weatherford
Administrative Law Judge